

EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE
MINUTES OF THE MAY 19, 2009 PENSION BOARD SPECIAL MEETING

1. Call to Order

Chairman Dr. Dean Roepke called the meeting to order at 12:05 P.M. in Room 201-B, Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233.

2. Roll Call

Members Present:

Linda Bedford (Vice Chair)
Donald Cohen
Keith Garland
Jeffrey Mawicke
Marilyn Mayr
Dr. Sarah Peck
Dr. Dean Roepke (Chairman)
Guy Stuller

Member Excused:

Mickey Maier

Others Present:

William Domina, Corporation Counsel
Mark Grady, Principal Assistant Corporation Counsel
David Arena, Director of Employee Benefits, Department of Administrative Services
Gerald Schroeder, ERS Manager
Steven Huff, Reinhart Boerner Van Deuren s.c.
Leigh Riley, Foley & Lardner LLP (by telephone)
Chris Trebatoski, Weiss Berzowski Brady LLP
Ken McNeil, Susman Godfrey LLP
Jim Southwick, Susman Godfrey LLP
Lexie White, Susman Godfrey LLP
John Bush, Michael Best & Friedrich LLP
Steve Schultze, Reporter, *Milwaukee Journal Sentinel*
Other Attorneys and Support Personnel

3. Legal Update

Reading a statement, Ms. Bedford moved that the Pension Board adjourn into closed session under the provisions of Wisconsin Statutes section 19.85(1)(g) with regard to item 3 for the purpose of the Pension Board receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation.

At the conclusion of the closed session, the Pension Board may reconvene in open session to take whatever actions it may deem necessary concerning these matters.

The Pension Board voted by roll call vote 8-0 to enter into closed session to discuss agenda item 3. Motion by Ms. Bedford, seconded by Dr. Peck.

During closed session, the Pension Board listened to reports from its legal counsel regarding *Milwaukee County et al. v. Mercer Human Resource Consulting, Inc.*

Upon returning to open session, the Pension Board voted 8-0 to approve the settlement of *Milwaukee County et al. v. Mercer Human Resource Consulting, Inc.* by adopting the recitals and resolutions set forth below. Motion by Mr. Cohen, seconded by Ms. Bedford.

WHEREAS; on February 9, 2005, the Milwaukee County Pension Board adopted a resolution authorizing Corporation Counsel to commence and maintain civil action(s) against any party who had an active role in the design, analysis or promotion of the 2000 pension benefit enhancements for the purpose of relieving the burden on Milwaukee County taxpayers caused by those benefit enhancements; and

WHEREAS; under File No. 05-63, the Milwaukee County Board of Supervisors adopted a resolution authorizing Corporation Counsel to negotiate and execute a contract with the law firm of Susman Godfrey LLP of Houston, Texas, to represent Milwaukee County in the prosecution of claims or causes of action against those organizations or persons deemed to have caused damage to Milwaukee County arising out of the creation and adoption of the 2000 pension enhancements; and

WHEREAS; on March 6, 2006, Milwaukee County, the Milwaukee County Employees' Retirement System and the Milwaukee County Pension Board ("Milwaukee County/Pension Board") commenced a civil action against Mercer Human Resource Consulting, Inc., in the U.S. District Court for the Eastern District of Wisconsin (*Milwaukee County et al. v. Mercer Human Resource Consulting, Inc.*, Case No. 06-C-0372), pursuant to the authority granted by the Milwaukee County Board of Supervisors and the Pension Board, alleging actuarial malpractice, intentional misrepresentation and breach of contract on the part of Mercer; and

WHEREAS; under File No. 06-233, the Milwaukee County Board of Supervisors adopted a resolution declaring the intention of Milwaukee County to deposit any proceeds recovered through the litigation hereinabove described into the Milwaukee County Employees' Retirement System pension fund for the purpose of reducing the fund's unfunded actuarial liability attributable to the 2000 pension enhancements or post-retirement employee benefits; and

WHEREAS; counsel for Milwaukee County/Pension Board and Mercer have engaged in extensive discovery and pre-trial litigation and also participated in a lengthy mediation process that did not yield an acceptable settlement proposal prior to the scheduled trial date; and

WHEREAS; the action therefore proceeded to trial before a jury, which began on May 4, 2009; and

WHEREAS; Milwaukee County/Pension Board has presented the majority of its case-in-chief and intends to call one additional expert witness, after which, if the trial continues, Mercer will present its defense. Mercer will offer the testimony of several former Milwaukee County officers and elected officials in an effort to show that Milwaukee County is more culpable than Mercer for the adverse fiscal consequences of the 2000 pension benefit enhancements, and also the testimony of experts who will controvert Milwaukee County's claim that the quality of Mercer's work and the actuarial assumptions utilized by Mercer did not conform to applicable professional standards; and

WHEREAS; Mercer has made an offer to pay \$45,000,000 to settle all claims and causes of action against Mercer arising out of the 2000 pension benefit enhancements; and

WHEREAS; based on a careful analysis of the risks and benefits of continued litigation, the Corporation Counsel recommends approval of the proposed settlement;

NOW, THEREFORE, BE IT RESOLVED that the Pension Board approves the agreement to accept payment of \$45,000,000 in full settlement of all claims and causes of action known or unknown against Mercer (U.S.) Inc., (formerly known as Mercer Human Resource Consulting, Inc.) and its affiliates or subordinates or other related entities, arising out the creation or adoption of the 2000 pension benefit enhancements; and

BE IT FURTHER RESOLVED that Corporation Counsel is authorized and directed to negotiate, approve and execute on behalf of the Milwaukee County Employees' Retirement System and the Pension Board such releases and stipulations as are necessary to consummate the settlement agreement in conformity with this Resolution; and

BE IT FURTHER RESOLVED that Corporation Counsel is authorized and directed to cause the proceeds of the settlement agreement to be disbursed to the Milwaukee County Employees' Retirement System pension fund, the law firm of Susman Godfrey LLP and other entities as may be required to comply with the prior resolutions hereinabove described.

4. Adjournment

The meeting adjourned at 1:05 p.m.

Submitted by Steven D. Huff,
Secretary of the Pension Board